

Adopt 2 Cal. Code Reg. Section 18944.2 to read:

§ 18944.2. Gifts to an Agency.

(a) Applicability. This regulation sets forth circumstances under which a payment made to a state or local government agency, that is controlled by the agency and used for official agency business, is not considered a reportable or limited gift to an individual public official, although the official receives a personal benefit from the payment.

(b) Definitions.

(1) "Payment" means a payment as defined in Section 82044 and includes a monetary payment to an agency, a loan, gift, or other transfer, and the payment for, or provision of, goods or services to an agency.

(2) "Agency head" means the secretary, director, or single individual who is the official in charge of an agency. For a multi-member body that governs an agency, "agency head" means the presiding member of the body.

(c) Gift to an Agency. A payment, that is otherwise a gift to a public official, as defined in Section 82028, shall be considered a gift to a public agency and not a gift to the public official if all of the following requirements are met:

(1) Agency Controls Use of Payment. The agency head, or his or her designee, determines and controls the agency's use of the payment. The donor may identify a purpose for the payment, but the donor may not designate by name, title, class, or otherwise an official who may use the payment. If the payment will provide a personal

1 benefit to an official, the agency head, or his or her designee, shall select the individual
2 who will use it. The agency official who determines and controls the agency's use of the
3 payment may not select himself or herself as the official who will use the payment.

4 (2) Official Agency Business. The payment must be used for official agency
5 business.

6 (3) Agency Reports the Gift. Within 30 days after use of the payment, the
7 agency reports the payment on a form prescribed by the Commission that includes the
8 following information:

9 (A) A description of the payment, the date received, the intended purpose, and
10 the amount of the payment (or the actual or estimated value of the goods or services
11 provided).

12 (B) The name and address of the donor, and if the donor is not an individual, the
13 name, address, and business activity, if any, of the donor. If the donor has raised funds
14 from other persons for the specific purpose of making the payment to the agency, the
15 report shall contain the names and amounts given by these persons.

16 (C) The agency's use of the payment, and the name and title of the agency
17 official for whom the payment was used.

18 (D) The form is signed by the agency head or his or her designee and maintained
19 by the agency as a public record subject to inspection and copying under Section
20 81008(a).

21 (E) A state agency shall provide the completed form to the Commission within
22 30 days after use of the payment. If the state agency maintains a website, the state

1 agency shall also post a copy of the form or the information in the form on its website in
2 a prominent fashion within 30 days after use of the payment. If the state agency does not
3 maintain a website, the Commission shall post a copy of the form or the information in
4 the form on its website.

5 (F) A local agency shall provide the completed form to the ethics agency for the
6 jurisdiction within 30 days after the use of the payment if the ethics agency has requested
7 to receive the forms. If no ethics agency exists for the jurisdiction, or the ethics agency
8 has not requested to receive the forms, a local agency shall provide the completed form to
9 the official who maintains the records of the agency's statements of economic interests
10 within 30 days after use of the payment. If the local agency maintains a website, a copy
11 of the form or the information in the form shall be posted on that website in a prominent
12 fashion within 30 days after use of the payment.

13 (G) The individual in the agency who has official custody of these forms is the
14 filing officer for the forms, keeps a log of the forms under both the agency and official
15 receiving the payment, and maintains the forms for a period of not less than four years.

16 (d) Limitations on Application of this Regulation. The exception provided in
17 subdivision (c) does not apply to the following payments:

18 (1) A payment for travel, including transportation, lodging, and meals, for a state
19 or local elected officer, as defined in Section 82020.

20 (2) A payment for travel that exceeds amounts in the agency's policy on
21 reimbursement rates for travel, meals, and lodging, and other actual and necessary
22 expenses, or if the agency has no policy, the Internal Revenue Service rates for

1 reimbursement of these expenses as established in Publications 463 and 1542, or their
2 successors.

3 (3) A payment for travel for which the agency official who is traveling has not
4 received prior written authorization from the agency head or his or her designee before
5 costs are incurred for the travel and before the travel commences.

6 (4) Passes or tickets, as described in Regulation 18944.1, which shall be
7 governed by that regulation.

8 (e) Public College and University Research Projects. Notwithstanding the above,
9 a donation to a California public college or university for a specific research project that
10 is received consistent with the requirements of Regulation 18702.4(c) or a meal received
11 in the course of the college's or university's official fundraising activity, which qualifies
12 under federal and state law for a deduction as a charitable contribution for educational
13 purposes, will be deemed a gift to the college or university and not to the public official
14 who receives a personal benefit from the payment.

15 Comments:

16 1. Acceptance of a pass or discount from a transportation company by a
17 public officer, other than a Public Utilities Commissioner, may result in forfeiture of the
18 official's office pursuant to Article XII, Section 7 of the California Constitution.

19 Note: Authority cited: Section 83112, Government Code.

20 Reference: Sections 82028, 82030, 82044, 87100, 87103, 87207, 87302 and 89501
21 through 89506, Government Code.